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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ANIBAL RODRIGUEZ, et al. individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 3:20-CV-04688-RS

**GOOGLE'S RESPONSE TO PLAINTIFFS'
NOTICE OF FILING REGARDING GOOGLE
ADVERTISING REVENUES (DKT. 582)**

Dept: 3, 17th Fl.
Judge: Hon. Richard Seeborg

Date Action Filed: July 14, 2020
Trial Date: August 18, 2025

1 Google submits this response to “Plaintiffs’ Notice of Filing Regarding Google
2 Advertising Revenues,” (Dkt. 582), which delineates the “list of exhibits Plaintiffs intend to offer
3 that show Google’s advertising-related revenue during the class period,” and “replacement
4 demonstratives” comparing Mr. Lasinski’s disgorgement calculations to “Google’s U.S.
5 advertising revenues during the class period.”

6 **I. PX 418-PX 428**

7 Google does not object to Plaintiffs’ submission of PX 418–PX 428. These exhibits contain
8 Google’s financial data for the specific advertising product lines involved in this case (App Promo,
9 AdMob, and Ad Manager) during the relevant period. Google does not oppose the jury seeing these
10 statements, because they are the financial statements from which Mr. Lasinski derives his
11 disgorgement figures.

12 **II. PX 429**

13 In contrast, Google objects to PX 429. This exhibit is Alphabet’s 2024 Form 10-K—an SEC
14 filing that reports Google’s entire financial picture, including total revenues beyond the scope of
15 this case. Plaintiffs purportedly seek to admit this because Mr. Lasinski cited Google’s 10-K
16 statements for 2016–2024 as “materials considered,” in his expert reports. But any references to
17 the 10-K in his reports are cursory and peripheral.

18 In his original report dated February 20, 2023, Mr. Lasinski cites the 10-K at page 7,
19 paragraph 19, claiming advertising revenues (including Search and YouTube, neither of which are
20 at issue) account for 79% of Google’s total revenues. This comparison is irrelevant and unfairly
21 prejudicial. Mr. Lasinski’s original report also cites the 10-K at page 8, paragraphs 21–22, to
22 support the banal propositions that Google earns revenue from ads on third-party websites and
23 mobile apps and that it generates revenue by placing “the right ads at the right time.” Finally, Mr.
24 Lasinski’s original report cites the 10-K, at page 30, paragraph 84, to define the term “traffic
25 acquisition costs.” In the same citation, Mr. Lasinski also cites the testimony of Google’s 12(b)(6)
26 witness, Belinda Langner.

27 As for his supplemental report dated April 25, 2025, Mr. Lasinski relied on Google’s 10-K
28 exclusively for Schedule SS 9.1, titled “U.S. Share of Total Alphabet Revenue.” Schedule SS 9.1

1 is cited only once, at page 4 note 13, to state: “my unjust enrichment calculations equate to less
 2 than approximately 0.1% of Google’s total revenues during the same period.” Introducing Google’s
 3 total revenue figures is unfairly prejudicial for reasons discussed at the July 30 pretrial conference
 4 and under established authority. *See, e.g., Guardian Life Ins. Co. of Am. v. Andraos*, 2009 WL
 5 10674144, at *3 (C.D. Cal. Sept. 10, 2009) (“The Court finds that any slight probative value that
 6 evidence of Guardian’s wealth and size may have to this action is outweighed by the danger that
 7 such evidence might unfairly prejudice the jury into finding for Andraos and ACM based in part
 8 on Guardian’s status as a large, wealthy corporation.”) (citing cases); *S.E.C. v. Goldstone*, 2016 WL
 9 3654273, at *12 (“Courts have long held that a general reference to a party’s financial condition is
 10 typically not admissible evidence.”) (citations omitted); *see also Txo Prod. Corp. v. Alliance Res.*
 11 *Corp.*, 509 U.S. 443 (1993) (“We agree . . . that the emphasis on the wealth of the wrongdoer
 12 increased the risk that the award may have been influenced by prejudice against large
 13 corporations[.]”).

14 Indeed, PX 429 was not necessary for Mr. Lasinski to calculate unjust enrichment at all. He
 15 calculated that figure using data about advertising revenue from the verticals reflected in PX 418–
 16 428. The only purpose of the 10-K was to supply aggregate numbers that Mr. Lasinski then used to
 17 illustrate what fraction of Google’s overall advertising business the disputed revenues represent
 18 (*i.e.*, the “0.3%” figure on Plaintiffs’ revised demonstrative slide).

19 This kind of use does not satisfy Federal Rule of Evidence 401’s basic relevance standard,
 20 let alone overcome Rule 403. Whether \$1.7 billion is 0.3% of Google’s total advertising revenue
 21 or 30% or 300% has no bearing on any fact the jury must decide—it neither proves nor disproves
 22 liability, damages, or any defense. At most, Plaintiffs might say it provides “context.” But context
 23 is not an element of a claim, and not all context is helpful or permissible.

24 Moreover, allowing PX 429 even in redacted form would introduce collateral details that
 25 could distract or sidetrack the jury. Alphabet’s Form 10-K is a lengthy document containing a
 26 wealth of information about Google’s businesses, finances, risks, and operations. Even if Plaintiffs
 27 only highlight the revenue figures, the jury could be exposed to other portions of the 10-K (through
 28 questioning or if jurors review the exhibit) that have nothing to do with this case. This creates a

1 real danger of confusion and undue consumption of time on issues far afield from the claims at
 2 trial. *See, e.g., 999 v. C.I.T. Corp.*, 776 F.2d 866, 872 (9th Cir. 1985) (noting that “evidence of the
 3 defendant's net worth” is “distracting and prejudicial” to the jury without prima facie case for
 4 punitive damages, and that improper introduction of evidence requires appellate court to “reverse
 5 the verdict for a new determination of compensatory damages untainted by the net worth evidence”)
 6 (citations omitted).

7 In short, the probative value of PX 429 is negligible. Whatever slight relevance Google’s
 8 overall advertising revenue might have as “background” is substantially outweighed by the risks of
 9 unfair prejudice, confusing the issues, and misleading the jury. Rule 403 tilts strongly against
 10 admission in these circumstances.

11 **III. REVISED DEMONSTRATIVES**

12 Google also objects to Plaintiffs’ “Replacement Slides” at ECF 582, pgs. 4–6. With these,
 13 Plaintiffs replaced slides that previously juxtaposed unjust enrichment against “Alphabet’s
 14 revenues” with ones comparing unjust enrichment to “Google’s U.S. Advertising Revenues.” But
 15 this tweak does not cure the problem.

16 The vast majority of those revenues come from products and services not at issue in this
 17 lawsuit. Plaintiffs’ claims, and their unjust enrichment theory, relate only to advertising in the
 18 context of third-party mobile apps, specifically through App Campaigns (App Promo), Google Ad
 19 Manager, and AdMob. That is a subset of Google’s overall advertising business. Including revenue
 20 streams from unrelated advertising channels would mislead the jury about the economic context of
 21 the case. It would suggest, without basis, that Google’s liability should be evaluated in light of
 22 business segments that had nothing to do with the alleged wrongdoing,

23 The prejudice from this “total advertising” comparison is essentially the same in character
 24 as the “total revenue” comparison. The number remains high, ensuring the unjust enrichment figure
 25 looks minuscule by comparison. Whether the denominator is all of Alphabet or just all Google
 26 advertising, the comparison still invites the jury to weigh any damages against an unrelated bucket
 27 of revenue. That invitation is improper. Even limiting the universe to “advertising” does not
 28 eliminate the unfair prejudice, because the jury could still be misled into thinking that any damages

1 award should be measured against Google’s total ad earnings rather than the harm caused in the
2 specific market at issue. *See Guardian Life Ins. Co. of Am.*, 2009 WL 10674144, at *3; *S.E.C. v.*
3 *Goldstone*, 2016 WL 3654273, at *12; *Shenon v. N.Y. Life Ins. Co.*, 2020 WL 1317722, at * (C.D.
4 Cal. Mar. 16, 2020) (noting that “presumption” that “evidence of a defendant’s wealth can induce
5 factfinders to abandon their objectivity and return a verdict based on passion and prejudice”) (citation omitted).

7 If Plaintiffs believe some comparison is necessary for context, the only proper frame of
8 reference would be the revenues from the specific app-related advertising verticals that are in
9 question: App Campaigns (App Promo), Ad Manager, and AdMob. Those are the segments from
10 which Plaintiffs claim Google unjustly profited. A demonstrative, for instance, could compare the
11 unjust enrichment figure to Google’s revenues in those three product categories—and only those
12 categories—over the same period. Such a comparison would at least be grounded in the facts of the
13 case and far less likely to inflame the jury. But Plaintiffs’ current demonstratives go much further,
14 sweeping in expansive unrelated revenue figures that dwarf the relevant market. That overreach
15 renders them inadmissible.

16 **IV. CONCLUSION**

17 For the foregoing reasons, Google respectfully requests that the Court exclude PX 429
18 (Alphabet’s 2024 Form 10-K) in its entirety from evidence. Google further requests that the Court
19 preclude Plaintiffs from presenting any demonstrative or argument that compares the claimed
20 damages or unjust enrichment to Google’s overall revenues—whether total corporate revenue or
21 total advertising revenue—as such comparisons would be unfairly prejudicial under Rule 403.

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Respectfully submitted,

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